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10 **COUNTY OF LOS ANGELES and**

11 **LOS ANGELES COUNTY SHERIFF'S DEPARTMENT**

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **SHELDON LOCKETT**

15 *Plaintiff*

16 vs.

17 **COUNTY OF LOS ANGELES, a**

18 public entity; **LOS ANGELES**

19 **COUNTY SHERIFF'S**

20 **DEPARTMENT; a law enforcement**

21 **agency; former SHERIFF JIM**

22 **MCDONNELL; MIZRAIN ORREGO,**

23 a Deputy Los Angeles County Sheriff;

24 **SAMUEL ALDAMA, a Deputy Los**

25 **Angeles County Sheriff; and DOES 1**

26 through 100, inclusive,

27 *Defendants.*

CASE NO.: 2:18-cv-5838-PJW

**DEFENDANT COUNTY OF LOS
ANGELES' MOTION FOR
SUMMARY JUDGMENT**

28 **TO THE COURT AND THE PARTIES AND THEIR ATTORNEYS
OF RECORD:**

PLEASE TAKE NOTICE THAT on a date and time to be determined by
the Court, Defendants **COUNTY OF LOS ANGELES** and **LOS ANGELES
COUNTY SHERIFF'S DEPARTMENT** (collectively, "COLA") will move for

1 summary judgment on Plaintiff SHELDON LOCKETT's ("Lockett") *Monell*
2 claim.

3 This Motion is made following the meet and confer conference of counsel
4 pursuant to Local Rule 7-3 which took place on or about May 27, 2020

5
6 Dated: June 29, 2020 **IVIE McNEILL WYATT PURCELL & DIGGS**

7
8 By: /s/ Jack F. Altura
9 RICKEY IVIE
10 JACK F. ALTURA
11 Attorneys for Defendants,
12 COUNTY OF LOS ANGELES, et al.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a use of force case brought under 42 U.S.C. § 1983. Plaintiff Sheldon Lockett alleges that Defendant Deputy Samuel Aldama and Defendant Deputy Mizrain Orrego “severely battered” Lockett “with their fists, feet, batons, and Taser electronic weapons.” Discovery has revealed that these allegations are untrue. Medical doctors who treated Lockett on the day of the incident have testified that he suffered no observable injuries to his chest, neck, and head. In fact, nearly two years after filing his lawsuit, Lockett dismissed his excessive force claim against Orrego conceding that he used no excessive force. Discovery has also revealed that Deputy Austin Embleton used the taser and that Deputy Carlos Feria used pepper spray. Curiously, they are not defendants.

Lockett asserts a *Monell* claim against Defendant County of Los Angeles alleging it failed to investigate deputy “cliques”—groups of tattooed deputies who associate for the express purpose of engaging in acts of misconduct—and discipline deputies who belong to “cliques.” Lockett’s central theory is that Orrego and Aldama belonged to a clique of tattooed deputies at the Compton sheriff’s station and used excessive force on Lockett in furtherance of their membership in the clique. (How Lockett squares this theory with his dismissal of Orrego is puzzling

The evidence shows Lockett’s theory against COLA is unsubstantiated. [REDACTED], and Feria and Embleton who used higher levels of force (pepper spray and taser) do not have the tattoo at all. [REDACTED]

[REDACTED] There is no evidence establishing a link between the tattoo and a deputy clique; nor is there evidence establishing a link between the tattoo and purposeful misconduct. It must be acknowledged that several deputies having the same tattoo is not inherently nefarious. There must be some evidence connecting a tattoo with

1 bad behavior. It is this missing link in this case that shows that Lockett is unable
2 to establish the existence of a deputy clique.

3 However, even if Lockett establishes the existence of a deputy clique, he
4 cannot show COLA was deliberately indifferent in its investigation and
5 disciplining of deputy cliques. COLA has investigated or is investigating the
6 substantiated deputy cliques that engaged or are alleged to engage in routine acts of
7 misconduct. For example, all members of the “Jump Out Boys” clique were
8 terminated from the LASD. Further, there is an ongoing investigation into the
9 existence of the “Banditos” clique and whether its members are engaging in
10 misconduct in furtherance of the alleged clique. While the “Vikings” is an alleged
11 clique that existed within the LASD, the Vikings have been defunct for decades.
12 Aside these cliques, however, there are no other substantiated deputy cliques that
13 engage in routine acts of misconduct. Therefore there are no deputy cliques that
14 exist that COLA should have investigated but did not.

15 Nonetheless, even if COLA’s investigation of prior deputy cliques was
16 lacking, Lockett lacks evidence that that failure caused his injuries in this case.
17 There is no evidence that the alleged inadequacy of COLA’s investigation of prior
18 deputy cliques existing at other LASD stations caused Aldama to use force on
19 Lockett. And even if Lockett can establish causation, his *Monell* claim still fails
20 because COLA was not on notice during any relevant time period of the need to
21 investigate the clique that Aldama and Orrego are alleged to be members of. There
22 is nothing in the record showing that on or prior to the date of the incident, COLA
23 could have known that a clique existed at the Compton station.

24 In sum, Lockett has not and cannot establish a triable issue as to the lack of a
25 clique or that COLA failed to investigate deputy cliques. Because there is no non-
26 speculative basis for the jury to conclude that Orrego or Aldama were members of
27 a clique and acted pursuant to the clique, COLA is entitled to summary judgment.
28

1 Lastly, Lockett's case is barred by the two-year statute of limitations for 42
2 U.S.C. § 1983 actions brought in California. Lockett's claims accrued on the date
3 of the incident, January 15, 2016, because that is when he suffered his actual
4 injuries. Yet Lockett filed his lawsuit on 9, 2018—more than two years later.
5 Moreover, no tolling provision applies. The only possible tolling provision,
6 California Government Code § 945.3 does not apply because Lockett's excessive
7 force and *Monell* claims do not relate to any criminal offense that Lockett was
8 charged with because of the use of force incident.

9 In the absence of a triable issue of fact as to the lack of a deputy clique and
10 COLA's failure to investigate deputy cliques, COLA is entitled to summary
11 judgment.

12 **II. STATEMENT OF FACTS**

13 **A. An Attempted Murder in the City of Compton Leads to a Call for** 14 **Service**

15 In the afternoon of January 15, 2016, Imunique Ross and Treymayne Cole
16 were standing in front of a house in the City of Compton in an area controlled by
17 the Tree Top Piru street gang. **Exhibit A** (Deposition of Imunique Ross), 32:18–
18 33:15; 36:16–18; 40:9–43:17. A silver car pulled up next to the residence, and the
19 driver started shooting. **Exhibit A**, 44:15–20; 50:6–24; 53:24–54:15. Mr. Cole
20 was shot in the leg. **Exhibit A**, 56:18–21. The police were called and an all-crime
21 broadcast was initiated describing the shooter and requesting assistance.

22 Deputy Samuel Aldama (“Aldama”) and Deputy Mizrain Orrego (“Orrego”) were
23 patrolling in Compton and heard the all-crime broadcast. **Exhibit B**
24 (Deposition of Deputy Samuel Aldama, Volume I), 110:17–111:4; 114:12–19.
25 They assigned themselves to the call and immediately drove west to an area of
26 Compton controlled by the rival Neighborhood Piru gang. **Exhibit C** (Deposition
27 of Deputy Mizrain Orrego Volume I), 35:11–16; 112:18–113:19; **Exhibit B**,
28 110:24–111:5.

B. Aldama's and Orrego's Initial Interaction with Lockett

While patrolling, Aldama and Orrego saw two individuals, Plaintiff Sheldon Lockett ("Lockett") and his friend Timothy Campbell ("Campbell"), on the sidewalk in front of a house drinking out of silver cans, which appeared to resemble an alcoholic beverage like beer. **Exhibit C**, 117:23–118:4; 118:20–119:3; 123:21–124:3; 124:17–20. Drinking beer on public property like a sidewalk is a violation of Compton Municipal Code § 7-8.3(a), and the deputies stopped their radio car to talk to Lockett and Campbell. **Exhibit C**, 125:8–16; 132:2–10. Upon exiting the vehicle, Aldama asked Lockett, "are you on probation or parole?" **Exhibit C**, 144:10–16. Lockett did not respond, but instead pulled out a handgun from his waistband and ran east away from the deputies. **Exhibit C**, 144:17–19; 146:8–13.

The deputies initiated a pursuit, and Orrego made a "417" call—person with gun—over the "patch." **Exhibit C**, 147:24–148:1; 149:1–8. A transmission over the "patch" is heard by all nearby deputies and facilitates coordination of an emergency situation like the one the deputies were handling. **Exhibit C**, 174:21–175:1. The pursuit ended when Lockett jumped over a wall into the enclosed patio of a nearby residence and tried to force his way in. **Exhibit C**, 175:2–20. The deputies heard the commotion, went to investigate, and found Lockett. They held him at gunpoint until other deputies could arrive for backup. **Exhibit C**, 176:2–17; **Exhibit B**, 146:16–23.

C. Use of Force Incident

Deputy Carlos Feria ("Feria") and Deputy Austin Embleton ("Embleton") were patrolling in Compton when they heard the 417 call. **Exhibit D** (Deposition of Deputy Carlos Feria), 29:4–30:1. They responded to the call and set up a containment zone near the location that Aldama and Orrego had last seen Lockett. **Exhibit D**, 32:24–33:5. After about a minute, Feria and Embleton received a radio transmission that Aldama and Orrego had located Lockett and were detaining a

1 few houses down, and they ran to that location. **Exhibit D**, 48:17–49:7. Aldama,
2 Orrego, Feria, and Embleton formed an arrest team. **Exhibit D**, 58:10–18. Feria
3 was designated OC spray, Embleton was designated taser. **Exhibit C**, 191:12–22.
4 After forming the arrest team, Feria boosted himself over the wall and into the
5 enclosed patio, as did Aldama. **Exhibit D**, 50:19–51:1; 51:20–24; 58:10–22.

6 Lockett was inside the enclosed patio on his knees, initially complying with
7 the deputies' order to get on the ground. **Exhibit D**, 53:14–54:1; **Exhibit B**,
8 143:2–20. However, immediately after Feria and Aldama entered the patio, Lockett
9 without notice or warning, fell forward onto his stomach and concealed both of his
10 hands underneath his body by his waistband. **Exhibit D**, 55:22–56:6; **Exhibit B**,
11 152:2–9. The deputies ordered Lockett to show his hands, but he refused. **Exhibit**
12 **B**, 152:10–16. Feria went to the right side of Lockett's body and with all his might
13 began pulling on Lockett's right shoulder/arm area to secure his right hand for
14 handcuffing. **Exhibit D**, 56:4–6. Aldama did the same on Lockett's left side.
15 **Exhibit E** (Deposition of Deputy Samuel Aldama Volume II), 187:10–17; 193:22–
16 194:8.

17 The deputies were unable to secure Lockett's hands. Lockett was shifting
18 his body from left to right preventing Feria from securing his hand. **Exhibit D**,
19 79:9–22. Aldama struck Lockett with his fists in order to gain compliance.
20 **Exhibit B**, 151:12–14; **Exhibit E**, 189:22–190:2. Feria deployed OC spray
21 because Lockett was resistive and Feria believed that Lockett may have been
22 attempting to retrieve a firearm from his waistband. **Exhibit D**, 59:16–60:2.

23 Shortly after Feria deployed OC spray, Embleton jumped into the enclosed
24 patio. *See Exhibit F* (Deposition of Deputy Austin Embleton), 109:2–21.
25 Lockett's hands were still concealed under his body. **Exhibit F**, 101:10–11. Prior
26 to using the taser, Embleton yelled "Taser, Taser, Taser." **Exhibit F**, 108:15–18.
27 Then Embleton fired the taser because Lockett refused to give up his hands, and
28 Embleton was in fear that he might be reaching for a firearm. **Exhibit F**, 109:18–

21. Lockett continued to resist, however, and Embleton used the taser a second time. **Exhibit F**, 114:16–115:3. After the second taser, the deputies were able to gain control over Lockett’s hands and he was handcuffed. **Exhibit F**, 126:4–10.

D. Facts of the Field Show-Up

After Lockett’s arrest, Deputy Rogelio Bensor was directed to transport Ross to the location of the arrest for a field show-up. **Exhibit G** (Deposition of Deputy Rogelio Bensor), 102:22–103:4. Ross identified Lockett at the shooter. **Exhibit A**, 108:12–17. At the time Ross identified Lockett as the shooter, she believed she had made a correct identification. **Exhibit A**, 108:16–20.

At Lockett’s preliminary hearing, Ross recanted her identification testifying that Lockett was not the shooter. **Exhibit A**, 110:3–16. However, Ross never said that she might be mistaken about her identification. **Exhibit A**, 108:21–23. She never told said that she had difficulty seeing out of her right eye. **Exhibit A**, 109:1–4. She never requested to get closer to Lockett to make the identification. **Exhibit A**, 109:16–19. She never told anybody that she couldn’t see Lockett clearly or that she needed corrective lenses. **Exhibit A**, 109:20–110:2.

On August 2, 2016, the district attorney dropped all charges against Lockett and he was released from custody shortly thereafter. **Exhibit K**.

III. LEGAL STANDARD FOR MOTION FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(a) provides that the court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” “A material fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit”. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). “The materiality of a fact is thus determined by the substantive law governing the claim or defense.” *Id*. Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

1 The absence of a genuine issue of material fact may be demonstrated by
2 pointing out to the district court that “there is an absence of evidence to support the
3 nonmoving party’s case” on issues where the nonmoving party bears the burden of
4 proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the party moving for
5 summary judgment meets its initial burden of identifying materials that
6 demonstrate the absence of any genuine issue of material fact, the nonmoving party
7 may not rely on the mere allegations in the pleadings in order to preclude summary
8 judgment. *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. Instead, the nonmoving party
9 must set forth, by affidavit or as otherwise provided in Rule 56, “specific facts
10 showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e); *see Kaiser*
11 *Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103–04 (9th Cir.).
12 The nonmoving party may not merely state that it will discredit the moving party’s
13 evidence at trial. *See Anderson*, 477 U.S. at 256. Instead, it must produce at least
14 some “significant probative evidence tending to support the complaint.” *Id.* at 256.

15 In deciding the existence of a material fact, the court does not weigh
16 conflicting evidence and does not make credibility determinations. *Id.* at 255.
17 While the court must view the evidence in the light most favorable to the
18 nonmoving party and inferences must be drawn in light most favorable to the
19 nonmoving party, inferences may be drawn in favor of the nonmoving party only if
20 “rational” or “reasonable” and otherwise permissible under the governing
21 substantive law. *T.W. Elec. Serv., Inc.*, 809 F.2d at 630–31. “Clearly, there must
22 be some limit on the extent of the inferences that may be drawn in the nonmoving
23 party’s favor from whatever specific facts it sets forth; if not, Rule 56(e)’s
24 requirement of specific facts would be entirely gutted.” *Id.* (internal quotations
25 omitted).

26 “Thus, the court’s ultimate inquiry is to determine whether the specific facts
27 set forth by the nonmoving party, coupled with undisputed background or
28

contextual facts, are such that a rational or reasonable jury might return a verdict in its favor based on that evidence.” *Id.* at 631.

IV. ARGUMENT

A. COLA is Entitled to Summary Judgment on Lockett’s *Monell* Claim Because There is No Triable Issue of Fact that Deputy Aldama and Deputy Orrego were Not Members of a Deputy Clique at the Time of the Incident

COLA is entitled to summary judgment because there is no triable issue of fact that Aldama and Orrego were not members of a deputy clique at the time of the incident. The *Monell* claim alleges that COLA’s failure to investigate deputy cliques within the LASD caused the formation of a new deputy clique at the Compton station represented by a common tattoo and alleges that Aldama and Orrego were members of this clique. ECF #41, ¶ 47(e)(ii)–(v). Specifically, Lockett alleges that the failure to investigate deputy cliques was the “moving force behind [his] injuries because [he is] informed and believe[s] that Defendants ALDAMA and DOES 1-20 *were members of the heretofore unknown clique/clique, and that they were positioned to commit acts of violence against Plaintiffs in association with that membership.*” ECF #41, ¶ 47(e)(v) (emphasis added).

Thus, for Lockett to survive this motion for summary judgment he must raise a triable issue of fact of: (1) the existence of a deputy clique at the Compton Station on and prior to the date of the incident; (2) Aldama’s and Orrego’s membership in that clique on and prior to the date of the incident; and (3) that Aldama’s and Orrego’s actions on the date of the incident were made in furtherance of that clique. The incontrovertible evidence shows that Lockett cannot meet his burden.

Lockett cannot meet his burden because he cannot establish that a single deputy—let alone the defendant deputies—had the subject tattoo on and prior to the date of the incident. [REDACTED]

1 [REDACTED]. [REDACTED]
2 [REDACTED]
3 [REDACTED]. However, even
4 assuming that there were deputies with the tattoo at the Compton Station during the
5 relevant time period, Lockett cannot establish that the group constituted a “deputy
6 clique”—a group whose primary activities was to engage in excessive force against
7 African Americans. It must be accepted that deputies with the same tattoo does not
8 mean that the group is a clique dedicated to violating the rights of African
9 Americans. Since Lockett’s *Monell* claim depends on proving this fact, which he
10 cannot do, he cannot raise a triable issue as to the existence of a deputy clique
11 during the relevant time period.

12 Therefore, COLA is entitled to summary judgment.

13 **1. What is a “Deputy Clique”**

14 The central issue in this motion is defining what is a “deputy clique.”
15 Surely, neither Lockett nor COLA may arbitrarily define a deputy clique—there
16 must be some logical, grounded definition of the term. Since Lockett’s allegations
17 about deputy cliques encompass allegedly criminal activity, ECF #41, ¶¶ 39, 47,¹
18 California’s definition of a criminal street gang is instructive, and the Court should
19 adopt that definition for this Motion.

20 California law defines a “criminal street gang” as an “ongoing organization,
21 association, or group of three or more persons, whether formal or informal, having
22 as one of its primary activities the commission of [one or more of certain
23 enumerated criminal offenses], having a common name or common identifying
24 sign or symbol, and whose members individually or collectively engage in, or have
25 engaged in, a pattern of criminal gang activity.” Cal. Penal Code § 186.22.

26
27
28 ¹For example, Lockett alleges that “[s]aid clique/gangs are responsible for violent
illegal acts and are rewarded for those acts.” ECF #41, ¶ 47 (e)(iii).

1 The California Supreme Court has explained that a “criminal street gang” is
2 an “ongoing organization, association, or group” that (1) “must have ‘three or more
3 persons’”; (2) the group’s “primary activities” must consist of certain crimes; (3)
4 the group must also have “a common name or common identifying sign or
5 symbol”; (4) and its members must be proven to have engaged in a “pattern of
6 criminal activity” by committing predicate offenses. *People v. Prunty*, 62 Cal. 4th
7 59, 71 (2015).

8 The Court should adopt California’s definition of a criminal street gang in
9 determining whether there is a deputy clique in this case. Lockett himself used that
10 definition in deposing COLA’s Rule 30(b)(6) witness on the “history” of deputy
11 cliques. **Exhibit H**, 80:18–82:24. Lockett cannot raise a triable issue on any of
12 these four elements.

13 **2. Lockett cannot Raise a Triable Issue of Fact as to the Existence of a**
14 **Deputy Clique in this Case**

15 **a. There is No Triable Issue of Material Fact that were Not Three**
16 **or More Persons With the Subject Tattoo on the Date of the**
17 **Incident**

18 Lockett cannot raise a triable issue of fact that there were three or more
19 deputies with the subject tattoo on the date of the incident. Since Lockett cannot
20 establish this fact, he cannot establish the existence of a deputy clique.

21 [REDACTED]
22 [REDACTED] dent. [REDACTED]

23 [REDACTED]. **SSUMF # 13.**

24 [REDACTED]

25 [REDACTED] **SSUMF #1, 10.** While Aldama testified that there are
26 approximately 10 deputies with the subject tattoo, Lockett has never established
27 who those deputies are, when those deputies got the tattoo, or why they got it.
28 **SSUMF # 27.** Any assertion by Lockett that the 10 deputies had the subject tattoo

1 prior to the incident would be based on inadmissible speculation. Similarly any
2 assertion by Lockett as to the reason why the 10 deputies purchased the subject
3 tattoo would be based on inadmissible speculation.

4 This incontrovertible evidence shows that at the time of the incident, there is
5 no triable issue of fact that there was not a deputy clique of “three or more
6 persons.” Without being able to establish this critical element, Lockett’s *Monell*
7 claim fails.

8 **b. There is no Triable Issue of Material Fact that the Deputy**
9 **Clique’s “Primary Activities” do not Consist of Engaging in**
10 **Excessive Force Against African Americans**

11 Even assuming that there was a group of deputies at the Compton Station in
12 existence on and prior to the incident with the subject tattoo, Lockett cannot raise a
13 triable issue of fact that the group’s “primary activities” consisted of engaging in
14 excessive force against African Americans.

15 *People v. Sengpadychith*, 26 Cal. 4th 316, 323 (2001) defines “primary
16 activities.” “Sufficient proof of the gang’s primary activities might consist of
17 evidence that the group’s members *consistently and repeatedly* have committed
18 criminal activity listed in the gang statute.” *Id.* at 324 (emphasis in original). This
19 definition “would necessarily exclude the occasional commission of those crimes
20 by the group’s members.” *Id.* at 323. Presciently, the California Supreme Court
21 noted:

22 [t]hough members of the Los Angeles Police Department may commit
23 an enumerated offense while on duty, *the commission of crime is not a*
24 *primary activity of the department*. Section 186.22 ... requires that one
25 of the primary activities of the group or association itself be the
26 commission of [specified] crime[s].... Similarly, environmental
27 activists or any other group engaged in civil disobedience could not be
28 considered a criminal street gang under the statutory definition unless
one of the primary activities of the group was the commission of one
of the enumerated crimes found within the statute.

Id. at 323–24 (citations omitted) (emphasis added).

1 Lastly, the Supreme Court noted that evidence of *past or present* conduct by
2 gang members involving the commission of ... crimes is relevant in determining
3 the group's primary activities because both past and present offenses have some
4 tendency to show the group's primary activity. *Id.* at 323.

5 Lockett has failed to uncover any evidence what "primary activities," if any,
6 the deputies who have the subject tattoo engage in. **SSUMF #45**. There is simply
7 no evidence that the alleged deputy clique has "consistently and repeatedly"
8 committed acts of excessive force against African Americans. **SSUMF #46**. Thus,
9 Lockett's *Monell* claim based on a deputy clique fails.

10 **c. Lockett cannot Raise a Triable Issue of Material Fact that**
11 **Members of the Alleged Deputy Clique Engaged in a Pattern of**
12 **Constitutional Violations**

13 Assuming (again) the existence of a deputy clique, Lockett cannot raise a
14 triable issue of material fact that any member of the clique engaged in a pattern of
15 excessive force against African Americans. California Penal Code § 186.22
16 defines a "pattern of criminal gang activity" as "the commission of, attempted
17 commission of, conspiracy to commit, or solicitation of..., or conviction of two or
18 more of [certain enumerated] offenses, provided [that] the offenses were
19 committed on separate occasions, or by two or more persons."

20 To constitute a "pattern," the statute requires that the offenses be
21 "committed on separate occasions, or by two or more persons...." *In re Nathaniel*
22 *C.*, 228 Cal. App. 3d 990, 1003 (1991). A pattern can be established by two or
23 more incidents, each with a single perpetrator, or by a single incident with multiple
24 participants committing one or more of the specified offenses. *Id.*

25 Evidence supporting a "pattern of criminal gang activity" must be
26 admissible. Evidence in the form of inadmissible hearsay or statements made by
27 witnesses who lack personal knowledge cannot sustain a "pattern." *Id.*
28 Documentary evidence of a sustained finding of excessive force may be sufficient
evidence of a predicate offense. *Cf. People v. Gardeley*, 14 Cal. 4th 605, 624

(1996) (disapproved of on other grounds by *People v. Sanchez*, 63 Cal. 4th 665, 374 P.3d 320 (2016)) (holding that documentary evidence of criminal conviction is sufficient evidence of predicate offense).

In this case, there is no admissible evidence that members of the alleged deputy clique engaged in a pattern of excessive force against African Americans. **SSUMF #47.** Mere allegations of excessive force are insufficient to show a pattern. *Cf. Lacy v. Palmer*, No. 12CV624-MMA (JMA), 2014 WL 12770245, at *8 (S.D. Cal. Apr. 30, 2014). To show a pattern, the plaintiff must show that “the complaints [against the deputy] were meritorious, and that the allegations of misconduct are meritorious.” *Meas v. City & Cty. of San Francisco*, 681 F. Supp. 2d 1128, 1142 (N.D. Cal. 2010).

Since Lockett cannot identify even a single sustained finding of excessive force—let alone a sufficient pattern of excessive force *by all three deputies* that would constitute a primary activity—Lockett cannot establish this element of a deputy clique.

d. There is No Triable Issue of Material Fact that the Subject Tattoo is not Linked with or Represents a Deputy Clique

There is no triable issue of fact that the subject tattoo is not linked with or represents a deputy clique. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 There was no requirement that another deputy allow Aldama to get the
2 tattoo. **SSUMF #4**. Anybody can get the tattoo. **SSUMF #5**. Aldama could have
3 gotten it on his first day of work. **SSUMF #6**. There is no name for the deputies
4 who have the tattoo. **SSUMF #7**. There are no gatherings or meetings of deputies
5 with the tattoo as far as Aldama is aware. **SSUMF #8**. Deputies with the tattoo do
6 not refer to themselves in a particular way, as far as Aldama is aware. **SSUMF #9**.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Neither Embleton nor Feria have the subject tattoo. **SSUMF #25**.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 This evidence—which Lockett cannot dispute—shows that the tattoo has no
16 connection to a deputy clique.

17 ***

18 In sum, Lockett cannot raise a triable issue of fact as to any of the elements
19 of a criminal street gang. Since his claim against COLA is dependent proving the
20 existence of a “gang,” which he cannot do, COLA is entitled to summary
21 judgment.

22 **B. There is No Triable Issue of Fact that County Failed to Investigate**
23 **Deputy Cliques or Failed to Discipline Deputies who Belong to Such**
24 **Cliques**

25 Even assuming that Lockett can raise a triable issue of fact as to the
26 existence of a deputy clique, he cannot establish that COLA failed to investigate
27 deputy cliques or discipline deputies who belong to such cliques. First, COLA has
28 investigated and disciplined all recent, substantiated deputy cliques. Second,
Lockett cannot establish that COLA’s alleged failure to investigate prior deputy

1 cliques at other stations caused his injuries in this case. Third, COLA could not
2 have been on notice of the existence of a deputy clique at Compton at the time of
3 the incident because there was no evidence of the existence of a deputy clique on
4 or prior to that date.

5 **1. Legal Standard for Establishing a *Monell* Claim**

6 A local government is liable for an injury under § 1983 under three possible
7 theories. First, a local government may be liable if “execution of a government’s
8 policy or custom, whether made by its lawmakers or by those whose edicts or acts
9 may fairly be said to represent official policy, inflict[ed] the injury.” *Monell v.*
10 *Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978). Second, a
11 local government can fail to train employees in a manner that amounts to
12 “deliberate indifference” to a constitutional right, such that “the need for more or
13 different training is so obvious, and the inadequacy so likely to result in the
14 violation of constitutional rights, that the policymakers of the city can reasonably
15 be said to have been deliberately indifferent to the need.” *City of Canton v. Harris*,
16 489 U.S. 378, 390 (1989). Third, a local government may be held liable under a
17 ratification theory if an official with final policy-making ratified a subordinate’s
18 unconstitutional decision or action and the basis for it. *Gravelet-Blondin v.*
19 *Shelton*, 728 F.3d 1086, 1097 (9th Cir. 2013).

20 To demonstrate a triable issue as to the existence of a custom or practice,
21 mere allegations are insufficient. *Lacy*, 2014 WL 12770245, at *8. “To survive
22 summary judgment based on a claim of prior complaints of misconduct, plaintiff is
23 required to show that the complaints were meritorious, and that the Police
24 Department failed entirely to investigate the complaints.” *See Meas*, 681 F. Supp.
25 2d at 1142.

26 ///

27 ///

28 ///

1 **2. There is no Triable Issue of Fact as to the Lack of a Custom or Practice**
2 **of Failing to Investigate Deputy Cliques or Discipline Deputies Who**
3 **Belong to Such Cliques**

4 There is no triable issue of fact as to the lack of a custom of failing to
5 investigate deputy cliques and failing to discipline deputies who belong to such
6 cliques. Absent a formal governmental policy, a plaintiff may establish *Monell*
7 liability through showing a “longstanding practice or custom which constitutes the
8 standard operating procedure of the local government entity.” *Gillette v. Delmore*,
9 979 F.2d 1342, 1346 (9th Cir. 1992). The custom must be so “persistent and
10 widespread” that it constitutes a “permanent and well settled city policy.” *Monell*,
11 436 U.S. at 691. Liability for improper custom may not be predicated on isolated
12 or sporadic incidents; it must be founded upon practices of sufficient duration,
13 frequency and consistency that the conduct has become a traditional method of
14 carrying out policy. *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (citations
15 omitted). “[A] custom or practice can be supported by evidence of repeated
16 constitutional violations which went uninvestigated and for which the errant
17 municipal officers went unpunished.” *Hunter v. County of Sacramento*, 652 F.3d
18 1225, 1236 (9th Cir. 2011); *see also Rodriguez v. Cty. of Los Angeles*, 891 F.3d
19 776, 803 (9th Cir. 2018).

20 Lockett cannot raise a triable issue of material fact that COLA had a custom
21 or practice of failing to investigate deputy cliques that engaged in routine acts of
22 misconduct and discipline deputies who belong to such cliques and engaged in
23 misconduct in furtherance of their membership of the clique. The only
24 substantiated deputy clique that engaged in acts of misconduct is the Jump Out
25 Boys. **SSUMF # 26.** The Jump Out Boys were investigated and the deputies
26 involved terminated. **SSUMF # 27.** While the Vikings are alleged to have
27 engaged in acts of misconduct, the clique had been defunct for at least twenty years
28 before the incident in this case. **SSUMF # 28.** Any act or omission by COLA with
 respect to the Vikings is too distant to have any bearing on this case.

1 While there are allegations of other deputy *groups* having existed in LASD,
2 there is no admissible evidence that these groups were cliques. In fact there is no
3 admissible evidence as to the purpose, if any, of these groups. For example, it has
4 not been established whether the “Banditos” are a group of deputies formed to
5 violate the law (a deputy clique); or, contrarily, whether the Banditos is something
6 innocuous, and a couple of its members have, independent of their association with
7 the Banditos, engaged in misconduct. There is a current investigation into this
8 issue. **SSUMF #32.**

9 Further, LASD investigates allegations of misconduct, such as excessive
10 force, but does not investigate allegations about tattoos or deputy subgroups absent
11 information that connects the tattoos or subgroups to misconduct. **SSUMF # 30,**
12 **31.** There was no such evidence of misconduct at the Compton station on and
13 prior to the date of the incident that could have or should have triggered an
14 investigation. **SSUMF # 30.**

15 In the absence of admissible evidence establishing that deputy cliques went
16 uninvestigated and deputies belong to cliques went undisciplined, Lockett’s *Monell*
17 claim fails.

18 **3. There is no Triable Issue of Fact that COLA’s Alleged Failure to**
19 **Investigate and Discipline Deputies was not the “Moving Force” Behind**
20 **Lockett’s Injuries**

21 The “first inquiry in any case alleging municipal liability under § 1983 is the
22 question whether there is a direct causal link between a municipal policy or custom
23 and the alleged constitutional deprivation.” *City of Canton*, 489 U.S. at 385. “To
24 meet this requirement, the plaintiff must show both causation-in-fact and
25 proximate causation.” *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1096 (9th Cir.
26 2013). There must be a “direct causal link” between a municipal policy or custom
27 and the alleged constitutional deprivation. *City of Canton*, 489 U.S. at 385. To be
28 a direct causal link or moving force behind the plaintiff’s injury, the court “must
find that the identified deficiency in the County’s policies is closely related to the

ultimate injury.” *See Gibson v. Cty. of Washoe*, 290 F.3d 1175, 1196 (9th Cir. 2002), overruled by *Castro v. Cty. of Los Angeles*, 833 F.3d 1060 (9th Cir. 2016). In other words, Lockett must demonstrate that “that the injury would have been avoided” had COLA adequately investigated and disciplined deputy cliques. *See id.*; *Lacy*, 2014 WL 12770245, at *8.

Lockett cannot meet this “rigorous standard[] of culpability and causation.” *Bd. of Cty. Comm’rs of Bryan Cty. v. Brown*, 520 U.S. 397, 405 (1997). There is insufficient evidence showing that the alleged constitutional violations by the deputies occurred because of COLA’s inadequate investigation of deputy cliques. **SSUMF #33.** In other words, “[t]here is nothing in the record to suggest that [the] Defendants would not have exercised force on Plaintiff had the County properly supervised, disciplined, or investigated [deputy cliques].” *Lacy*, 2014 WL 12770245, at *8.

Specifically, there is no evidence to suggest that Aldama or Orrego believed that COLA inadequately investigated and disciplined deputy cliques. There is no evidence to suggest that Aldama or Orrego believed that if they engaged in routine acts of excessive force against African Americans, they would suffer no discipline. Without a direct causal link between the alleged inadequate investigation and discipline and the alleged constitutional violations, Lockett’s *Monell* claim fails. *See Snyder v. City & Cty. of San Francisco*, 288 Fed.Appx. 346, 347-48 (9th Cir. 2008) (affirming summary judgment for defendant based on insufficient evidence of causation on claim that it was liable under *Monell* for assault by off-duty officer).

4. There is No Triable Issue of Fact that COLA was not Deliberately Indifferent in its Policies about Investigating and Disciplining Deputy Cliques

To state a claim based on an “inaction” theory, such as a failure to investigate and failure to discipline, a plaintiff must show that the custom or practice amounts to “deliberate indifference to the plaintiff’s constitutional right.”

1 *Jackson v. Barnes*, 749 F.3d 755, 763 (9th Cir. 2014); *see also Rodriguez*, 891 F.3d
2 at 803. “This requires showing that the defendant ‘was on actual or constructive
3 notice that its omission would likely result in a constitutional violation,’” *id.*
4 (*quoting Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1145 (9th Cir. 2012)), and yet
5 the defendant nonetheless chose to retain that policy. *Connick v. Thompson*, 563
6 U.S. 51, 61 (2011). “[D]eliberate indifference is a stringent standard of fault,
7 requiring proof that a municipal actor disregarded a known or obvious
8 consequence of his action.” *Brown*, 520 U.S. at 410. Only when the need for more
9 investigations or discipline is so obvious, and the inadequacy so likely to result in
10 the violation of constitutional rights, that the policymakers of the public entity can
11 reasonably be said to have been deliberately indifferent. *Castro*, 833 F.3d at 1076.

12 Lockett cannot meet this standard because COLA lacked actual and
13 constructive notice of the existence of a deputy clique at the Compton station on or
14 before the incident. There is nothing in the record to suggest that at the time of the
15 incident, COLA could have known that a deputy clique existed at the Compton
16 station or that COLA should have investigated the Compton for the existence of a
17 deputy clique. **SSUMF #30, 34**. For example, Lockett cannot identify a “pattern
18 of prior constitutional violations” either at Compton station or any other sheriff’s
19 station that went undisciplined. *See Keyes v. Washington Cty.*, No. 3:15-CV-1987-
20 AC, 2017 WL 3446256, at *6 (D. Or. Aug. 10, 2017).

21 Moreover, deliberate indifference is unlikely to be established when the
22 plaintiff alleges the defendants engaged in criminal acts, as opposed to mere
23 constitutional violates. *See id.*; *cf. Flores v. Cnty. of Los Angeles*, 758 F.3d 1154,
24 1160 (9th Cir. 2014) (“If the threat of prison time does not sufficiently deter sexual
25 assault, it is not plausible to assume that a specific instruction not to commit sexual
26 assault will provide such deterrence.”).

27 ///

28 ///

C. No Triable Issue as to Lack of Ratification of Deputy Misconduct

Lockett's failure to investigate and discipline claim also fails under a ratification theory. *See Rabinovitz v. City of Los Angeles*, 287 F. Supp. 3d 933, 967 (C.D. Cal. 2018). "To show ratification, a plaintiff must prove that the authorized policymakers approve a subordinate's decision and the basis for it." *Sheehan v. City & Cty. of S.F.*, 743 F.3d 1211, 1231 (9th Cir. 2014), *rev'd on other grounds*, 575 U.S. 600 (2015). Neither a policymaker's mere knowledge of, nor the policymaker's mere refusal to overrule or discipline, a subordinate's unconstitutional act suffices to show ratification. *Christie v. Iopa*, 176 F.3d 1231, 1239 (9th Cir. 1999). Ratification requires more than a supervisor's subsequent approval of an unconstitutional act. *Hulsted v. City of Scottsdale*, 884 F. Supp. 2d 972, 1014 (D. Ariz. 2012). "To hold cities liable under section 1983 whenever policymakers fail to overrule the unconstitutional discretionary acts of subordinates would simply smuggle respondeat superior liability into section 1983 law." *Gillette*, 979 F.2d at 1348. Under the ratification theory, a final policymaker, by endorsing the decision of a subordinate to whom he has delegated authority "simply makes clear that the policy was in effect at the time of the incident and was the 'moving force' for the unconstitutional act." *Lancaster v. Carey*, 2011 WL 2198313, at *14 (E.D. Cal. June 6, 2011).

In this case, the final policymaker of the LASD is the sheriff. *Soares v. Cty. of Los Angeles*, No. 2:17-CV-00924-RGK-AS, 2018 WL 4896659, at *4 (C.D. Cal. Apr. 25, 2018); *cf. Los Angeles Police Protective League v. Gates*, 907 F.2d 879, 882-83, 890 (9th Cir. 1990). At the time of Lockett incident, Sheriff McDonnell was the sheriff and therefore the final policymaker for LASD.

Lockett's ratification claim fails as a matter of law because there is no evidence that Sheriff McDonnell approved of Aldama's or Orrego's actions and the basis for those actions. In fact, Sheriff McDonnell ordered an inquiry into deputy cliques. **SSUMF # 29**. At the time of incident, there was no evidence of

1 the existence of a deputy clique at the Compton Station or that Aldama or Orrego
2 were alleged members of that clique. Therefore, without any knowledge of the
3 existence of the clique, Aldama's or Orrego's membership in the clique, or actions
4 taken in furtherance of the clique, Sheriff McDonnell could not have ratified the
5 deputies' acts and *the basis for them*. **SSUMF #35.**

6 *Christie v. Iopa* is dispositive for this proposition. In that case, the Ninth
7 Circuit affirmed the dismissal of plaintiff's ratification claim because there was no
8 evidence that the final policymaker knew of the facts underlying the defendant's
9 alleged constitutional violations while those violations were ongoing. 176 F.3d at
10 1239 ("[R]atification requires, among other things, knowledge of the alleged
11 constitutional violation"). The final policymaker's knowledge of the alleged
12 constitutional violations came at a later date when the violations had ceased. *Id.*

13 **D. No Triable Issue of Fact as to the Lack of Any Other Custom or**
14 **Practice**

15 Lockett's primary *Monell* argument is about deputy cliques and COLA's
16 investigation and discipline of deputies who belong to such cliques. However,
17 Lockett asserts a host of garden-variety, boilerplate *Monell* allegations that lack
18 any evidentiary basis. In the parties' meet and confer efforts, COLA requested that
19 Lockett dismiss some of these claims to narrow the issues to be decided by the
20 Court. Lockett said that decision would be made at a later date, but has thus far not
21 done so. Ultimately, COLA is entitled to summary judgment on these claims
22 because there insufficient evidence to support them.

23 Lockett alleges the following custom and practices:

- 24 • COLA tolerates excessive force, ECF #41, ¶ 47(a), p.10
- 25 • COLA tolerates unlawful tasing of arrestees, ECF #41, ¶ 47(b), p.10
- 26 • COLA tolerates racial animus by deputies, ECF #41, ¶ 47(c), p.10
- 27 • COLA fails to use appropriate procedures for detentions and arrests, ECF
28 #41, ¶ 47(d), p.10

- COLA tolerates false police reports, false statements, intimidating witnesses, and obstructing with an investigation, ECF #41, ¶ 47(e), pp. 10–11
- COLA tolerates a code of silence, ECF #41, ¶ 47(f), p.11
- COLA tolerates inadequate procedures for investigating complaints of officer misconduct, ECF #41, ¶ 47(f), p. 11;
- COLA fails to properly hire or train deputies, ECF #41, ¶ 56, p.12.

There is simply no evidence that COLA has a custom or practice about any of these allegations. **SSUMF #36.** At most, Lockett raises a triable issue as to the existence of these issues in the Lockett case only. However, a single act of misconduct is not sufficient to support a custom or practice. “Liability for improper custom may not be predicated on isolated or sporadic incidents” and “[t]he custom must be so ‘persistent and widespread’ that it constitutes a ‘permanent and well settled city policy.’” *Trevino*, 99 F.3d at 918 (9th Cir.1996) (*quoting Monell*, 436 U.S. at 691). Lockett has no evidence of a “persistent and widespread custom as to any of these issues and so COLA is entitled to summary judgment.

E. Lockett’s Claims are Barred by the Statute of Limitation

An independent ground that COLA is entitled to summary judgment is that Lockett’s claims are barred by the statute of limitation. Lockett’s claims accrued on January 15, 2016 because that is the date that Lockett became aware of his actual injuries. *Cabrera v. City of Huntington Park*, 159 F.3d 374, 381 (9th Cir. 1998). A “claim accrues upon awareness of the actual injury,” not upon awareness of a legal wrong. *Lukovsky v. City & Cty. of San Francisco*, 535 F.3d 1044, 1049 (9th Cir. 2008). A “cause of action accrues even though the full extent of the injury is not then known or predictable.” *Wallace v. Kato*, 549 U.S. 384, 391 (2007).

1 Yet Lockett did not file the Complaint until July 9, 2018 after the expiration
2 of the two-year statute of limitations expired. *MacEachern v. City of Manhattan*
3 *Beach*, 623 F. Supp. 2d 1092, 1102 (C.D. Cal. 2009); Cal. Code Civ. Proc. § 335.1.
4 Lockett's claims are barred unless tolled. *See id.*

5 The only possible tolling statute is California Government Code § 945.3,
6 which states in relevant part:

7 No person charged by indictment, information, complaint, or other
8 accusatory pleading charging a criminal offense may bring a civil
9 action for money or damages against a peace officer or the public
10 entity employing a peace officer based upon conduct of the peace
11 officer relating to the offense for which the accused is charged,
12 including an act or omission in investigating or reporting the offense
or arresting or detaining the accused, while the charges against the
accused are pending before a superior court.

13 Any applicable statute of limitations for filing and prosecuting these
14 actions shall be tolled during the period that the charges are pending
15 before a superior court.

16 However, Lockett's claim against the deputies and COLA is not based upon
17 conduct that is related to any criminal offense for which he was charged. Ninth
18 Circuit courts have found that § 945.3 tolls a civil claim in two situations: (1) the
19 plaintiff is charged with resisting arrest or battery on police officer and
20 subsequently sues for excessive force or false arrest arising out of the same facts
21 (the facts underlying the civil claim and the criminal offense are the same), *see*
22 *e.g.*, ; and (2) the officer used force while investigating, arresting, or detaining the
23 plaintiff for a crime he or she was later charged with, *see e.g., Cardenas v. Cty. of*
24 *Riverside*, No. EDCV0800020VAPOPX, 2008 WL 11409164, at *4 (C.D. Cal.
25 Apr. 25, 2008).

26 Neither of these situations is present here. First, Lockett was not charged
27 with resisting arrest or battery on a peace officer. **SSUMF # 38**. Second, the
28

deputies did not use force while “investigating,” “arresting,” or “detaining” Lockett for attempted murder. Case law supports this conclusion.

In *Cardenas*, 2008 WL 11409164, at *1, *4, officers executing a search warrant for drug-related offenses shot and injured the plaintiff. The plaintiff was later criminally charged with drug possession, and then filed a § 1983 lawsuit alleging excessive force. *Id.* at *4. While the facts underlying the excessive force claim occurred at a different time and place than the facts supporting the drug charges, the Court found the two were “related.” *Id.* at *5. The civil claim and criminal were related because the facts underlying the excessive force claim arose during the investigation arrest, or detention of the plaintiff for the drug charges. *Id.*

In this case, by contrast, Orrego, the driver of the radio car, did not stop his radio car to investigate, arrest, or detain Lockett for attempted murder. **SSUMF #39.** While it is true that Orrego was aware that an attempted murder had been reported and they were in the general vicinity looking for a suspect, he did not stop his vehicle to investigate it. **SSUMF #40.** The incontrovertible facts show that Orrego approached Lockett because he was drinking out of a silver can on public property, which appeared to be a violation of the City of Compton Municipal Code § 7-8.3(a).² **SSUMF #40.**

Moments after the deputies approached Lockett, he brandished a firearm and ran. As the deputies pursued Lockett, Orrego reported over his police radio that Aldama and he were in pursuit of a “417” suspect. **SSUMF #41.** A “417” suspect refers to California Penal Code § 417—brandishing a firearm. Police officers in

²Compton Municipal Code § 7-8.3(a)states: “No person shall drink any alcoholic beverage: (1) on any public street, sidewalk, parkway or alley, City park, City recreation area, City open space, or playground, or in any railroad depot or bus station, or any public place unless authorized by the City Manager; or (2) in any place open to the patronage of the public, which premises are not licensed for the consumption of such liquor or alcoholic beverage on the premises; or (3) on private property open to public view without the express permission of the owner, his or her agent, or the person in lawful possession thereof.”

1 pursuit of an attempted murder suspect are trained to report a “245” suspect
2 (assault with a deadly weapon), *see* Cal. Penal Code § 245, or “187/664” suspect
3 (murder/attempted murder). *See* Cal. Penal Code § 187; Cal. Penal Code § 664.
4 Neither deputy reported a “245” or “187/664” in this case. **SSUMF #42.**

5 At Lockett’s preliminary hearing for attempted murder, neither Aldama nor
6 Orrego testified. **SSUMF #43.** In fact, the only evidence presented by the district
7 attorney was the identification by the shooting victim Imunique Ross. **SSUMF**
8 **#44.** The head district attorney’s decision to file Information was based solely on
9 the testimony at the preliminary hearing.

10 These incontrovertible facts show that the attempted murder charge is not
11 related to excessive force claim for purposes of tolling under § 945.3.

12 Since Lockett’s excessive force claim is barred by the statute of limitations,
13 so too is his *Monell* claim since that is the only constitutional violation that Lockett
14 alleges. *Cuadra v. City of S. San Francisco*, No. C 08-3439 TEH, 2009 WL
15 593988, at *4 (N.D. Cal. Mar. 5, 2009) (*citing Fairley v. Luman*, 281 F.3d 913,
16 917 (9th Cir.2002) for the proposition that a *Monell* claim requires the plaintiff to
17 show a constitutional deprivation).

18 **V. CONCLUSION**

19 For the foregoing reasons, COLA respectfully requests that the Court grant
20 this Motion and enter a judgment in favor of COLA.

21
22 Dated: June 29, 2020

IVIE, McNEILL & WYATT

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